

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO  
CIVIL DIVISION

**Ohioans For Concealed Carry** :  
c/o Derek DeBrosse :  
503 South Front Street, Suite 240B :  
Columbus, Ohio 43215 :

and :

**Buckeye Firearms Foundation, Inc.** :  
c/o Dean Rieck, Executive Director :  
P.O. Box 357 :  
Greenville, Ohio 45331 :

and :

**Gary Witt** :  
1963 Faymeadow Avenue :  
Columbus, Ohio 43229 :

Plaintiffs, :

vs. :

**The City of Columbus, Ohio,** :  
**c/o City Attorney Zach M. Klein** :  
77 North Front Street :  
Columbus, Ohio 43215 :

and :

**City Attorney Zach M. Klein, in his official** :  
**capacity as City Attorney** :  
77 North Front Street :  
Columbus, Ohio 43215 :

Defendants. :

CASE NO. \_\_\_\_\_

JUDGE \_\_\_\_\_

**VERIFIED COMPLAINT FOR**  
**INJUNCTION AND DECLARATORY**  
**JUDGMENT**

Now come Plaintiffs, and for their Complaint for Injunction and Declaratory Judgment against the Defendants listed in the above-caption state as follows:

**INTRODUCTION**

1. Plaintiffs seek an injunction against enforcement of Columbus Codified Ordinances §2323.171 and §2323.13 (collectively, the “Ordinances”), as the Ordinances are unconstitutional because they are preempted by Ohio’s Statewide firearm preemption statute, R.C. §9.68. True and accurate copies of the Ordinances are attached hereto as Exhibit “A”.

2. Plaintiffs seek a declaratory judgment that the Ordinances violate R.C. §9.68.

**PARTIES**

3. Plaintiff Ohioans for Concealed Carry, Inc. (hereafter “Plaintiff OFCC”) is a not-for-profit Ohio corporation formed in 1999 and composed of firearm owners across the state of Ohio, including members who are taxpayers of the City of Columbus pursuant to R.C. §733.59.

4. Plaintiff Buckeye Firearms Foundation, Inc. (hereinafter “Plaintiff BFF”) is a not-for-profit Ohio corporation formed in 2013 and composed of firearm owners across the state of Ohio, including members who are taxpayers of the City of Columbus pursuant to R.C. §733.59.

5. Plaintiff Gary Witt (hereafter “Plaintiff Witt”) is a member of OFCC and a resident and taxpayer of the City of Columbus pursuant to R.C. §733.59.

6. Defendant City of Columbus is a municipal corporation with offices at 77 South Front Street, Columbus, Ohio 43215.

7. Defendant Zach Klein, in his official capacity as City Attorney (hereafter, “Defendant City Attorney”), with offices at 77 South Front Street, Columbus, Ohio 43215, is the City Attorney as contemplated by R.C. §733.59 and City of Columbus Charter Section 66 *et seq.*, and is responsible for advising the City on legal matters.

**JURISDICTION AND VENUE**

8. This Court has original jurisdiction pursuant to Article IV, §3(B)(1) of the Ohio Constitution, and pursuant to R.C. §9.68, R.C. §733.59 and R.C. Chapter 2727.

**FIRST CAUSE OF ACTION**

**Statutory taxpayer's Action for Injunctive Relief under R.C. §733.59**

9. Plaintiffs incorporate paragraphs 1 to 8 above as if the same were fully rewritten and set forth herein.

10. In May of 2018, Defendant City of Columbus adopted Codified Ordinance §2323.171 which purports to make unlawful the possession of certain parts of firearms or components of firearms, and which reads in pertinent part as follows:

(A) No person shall knowingly acquire, have, carry, or use an illegal rate-of-fire acceleration firearm accessory.

(B) Whoever violates this section is guilty of unlawful possession of a firearm accessory, a misdemeanor punishable by up to one year in jail with a mandatory minimum jail term of at least one hundred eighty (180) consecutive days during which mandatory jail term the defendant shall not be eligible for work release and up to a \$1500 fine.

(C) For the purposes of this section:

(1) "Illegal rate-of-fire acceleration firearm accessory" means any trigger crank, a bump-fire device, or any part, combination of parts, component, device, attachment, or accessory, that is designed or functions to accelerate the rate of fire of a semi-automatic firearm but not convert the semi-automatic firearm into an automatic firearm. These include, but are not limited to, firearm accessories described or marketed as bump stocks, bump-fire stocks, slide fires, and accelerators.

11. On or about May 31, 2018, Plaintiff OFCC and Plaintiff BFF, on behalf of themselves, and Plaintiff Witt on behalf of himself, sent correspondence to Defendant City Attorney advising him that Codified Ordinance §2323.171 was unconstitutional, a plain violation of Ohio's firearm preemption statute, R.C. §9.68, and that the City Attorney must take action to

invalidate or enjoin enforcement of the ordinance. A true and accurate copy of the letter is attached as Exhibit "B".

12. In May of 2018, the City of Columbus adopted Codified Ordinance §2323.13. Codified Ordinance §2323.13, Columbus' firearms disability legislation, results in mandatory sentencing for crimes including that set forth in that ordinance and imposes, at section (B), the following penalties:

(B) Whoever violates this section is guilty of misdemeanor having weapons while under disability, a misdemeanor punishable by up to one year in jail with a mandatory minimum jail term of at least one hundred eighty (180) consecutive days during which mandatory jail term the defendant shall not be eligible for work release and up to a \$1500 fine.

13. On or about June 12, 2018, Plaintiff OFCC and Plaintiff BFF, on behalf of themselves, and Plaintiff Witt on behalf of himself, sent correspondence to Defendant City Attorney (a true and accurate copy of the which is attached as Exhibit "C") advising him the City's Codified Ordinance §2323.13 was unconstitutional, a plain violation of Ohio's firearm preemption statute, R.C. §9.68, and that the City Attorney must take action to invalidate or enjoin enforcement of the ordinance.

14. Defendant City Attorney did not reply to Plaintiffs' requests. Upon information and belief, Defendant City Attorney took no affirmative action to prevent Defendant City from adopting or enforcing legislation (specifically, the Ordinances) that violates R.C. §9.68, or advising the City that to do so would constitute a blatant abuse of power directly contrary to R.C. §9.68, given that R.C. §9.68 was upheld by the Ohio Supreme Court as a constitutionally-sound restriction on the City's home rule power in *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St.3d 96 (2008) and *City of Cleveland v. State of Ohio*, 128 Ohio St.3d 135 (2010).

15. Defendant City Attorney has not taken any action to oppose the City's violation of R.C. §9.68, and upon information and belief, has no intention of so acting. In fact, Defendant City

Attorney, upon information and belief, approved the Ordinances, and publicly stated that the City was permitted to ban the firearm parts and components addressed in Codified Ordinance §2323.171, and was permitted to enact the restrictions set forth in Codified Ordinance §2323.13.

16. Defendant City Attorney has a clear legal duty, pursuant to R.C. §733.56, and Columbus Charter Section 71, to apply for an injunction to restrain the misapplication of funds of the City, the abuse of its powers, or the execution or performance of any contract made in behalf of the City in contravention of law, or which was procured by fraud or corruption.

17. Implementation of the Ordinances has resulted in, or is imminently likely to result in, the misapplication (and an inappropriate and unlawful expenditure) of funds of the City, by virtue of efforts by the City to advertise and promote the Ordinances, enforce the Ordinances, implement the Ordinances and defend the Ordinances. The Ordinances are an abuse of the City's home rule power as repeatedly stated by the Ohio Supreme Court. The Ordinances have involved, or are reasonably likely to involve, execution of contracts with third parties concerning the advertisement, enforcement, and implementation of the unlawful provisions therein, including but not limited to contracts for public defenders for indigent defendants charged with violating the Ordinances.

18. In spite of Plaintiffs' requests, Defendant City Attorney has not taken action to restrain the misapplication of funds, abuse of corporate powers or execution of unlawful contracts related to or resulting from the adoption of the Ordinances.

19. Plaintiffs seek to enforce the public right of the people to keep and bear arms and all peripheral rights guaranteed to them by the Constitution of Ohio, the Constitution of the United States of America and R.C. §9.68.

20. The Plaintiffs have deposited security for costs with the Clerk of Courts, as required by R.C. §733.59, and pursuant to the rules of this Court concerning the filing of civil actions and stand ready to make such additional deposits as may be ordered.

21. Accordingly, pursuant to R.C. §733.59 and City of Columbus Charter Section 74, Plaintiffs are entitled to preliminary and permanent injunctions prohibiting Defendants from expending funds, executing contracts, or taking any action in furtherance of implementation, enforcement or advertisement of the Ordinances. Plaintiffs are further entitled to recover their costs, expenses of this action, and reasonable attorney fees.

**SECOND CAUSE OF ACTION**  
**Declaratory Judgment**

22. Plaintiffs incorporate paragraphs 1 to 19 above as if the same were fully rewritten and set forth herein.

23. Pursuant to Ohio Revised Code §9.68(B), Plaintiffs are entitled to declaratory judgment and request this Court declare the Ordinances, as well as every other ordinance enacted, promulgated and/or maintained by Defendant City that purports to regulate the right of a person to possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components and ammunition, to be unlawful.

24. Ohio Revised Code §9.68 provides Plaintiffs a private right of action to challenge any ordinance, rule, or regulation in conflict with it. The statute further mandates an award of attorney fees, costs and expenses to any person or entity that prevails in a challenge to a local ordinance.

25. Pursuant to Ohio Revised Code §9.68(B), Plaintiffs are entitled to declaratory judgment and request this Court declare the Ordinances, as well as every other ordinance enacted,

promulgated and/or maintained by Defendant City that purports to regulate the right of a person to possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components and ammunition, to be unlawful, and to further declare that Plaintiffs have prevailed in a challenge as contemplated by R.C. §9.68, and award them attorney fees.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

1. Enjoin Defendants and those acting in concert with them from enforcing the Ordinances and from expending any City funds to implement, advertise, enforce, defend or prepare to implement, advertise, enforce or defend the Ordinances.
2. Issue a Declaratory Judgment that the Ordinances are unlawful and unconstitutional pursuant to R.C. §9.68.
3. Issue a Declaratory Judgment that Plaintiffs have prevailed in a challenge to the Ordinances, and are entitled to recover their costs and reasonable attorney fees from Defendants.
4. Award to Plaintiffs the costs of this action;
5. Award to Plaintiffs reasonable attorney fees; and
6. Such other relief as this Court deems just and proper, at law and in equity.

Respectfully submitted,

/s/ David S. Kessler

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